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Supreme Court of the United States

October Term, 1952

No. 226

J. LAURITZEN,
Petitioner,

against

EVALD JOHANN LARSEN,
Plaintiff-Respondent.

BRIEF OF THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, *AMICUS CURIAE,* IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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TO THE HONORABLE THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Statement

This brief is filed by The Government of the United Kingdom of Great Britain and Northern Ireland as *amicus curiae,* because the legal principles and practical consequences involved in this case are of paramount importance to all maritime nations, including the United Kingdom.

Confusion and conflict in the interpretation of the jurisdictional scope and Congressional intent of the Jones Act are apparent in the decisions of various courts. Such confusion and conflict can be resolved by this Honorable Court. In view of the analysis and discussion of these decisions in the briefs of the Petitioner for Writ of Certiorari, and

of Plaintiff-Respondent, it would be repetitious to analyze and discuss these decisions in this brief.

But it does seem both appropriate and of the highest importance to point out to this Honorable Court the necessity of determining the scope of the Jones Act, of establishing reasonable principles for the guidance of the lower courts in their exercise of discretion in disputes between foreign seamen and foreign shipowners, and of the obvious or probable consequences of the decision of the Court of Appeals in this case in the absence of a definite determination by this Court of the questions involved.

Moreover, the decision of the Court of Appeals may well result in grave inequities and serious impediment to the free flow of international commerce, which can be avoided by a definitive decision of this Court.

POINT I

The principles of law established by the instant case are of extreme importance to all maritime countries, including the United Kingdom.

Just as in this country the obligations of an American shipowner to his seamen are clearly defined in statutory law, supplementing the general international common law, so too are the obligations of foreign shipowners to their seamen defined in the codified laws and judicial decisions of the country of the vessel's flag. If the decision of the Court of Appeals in the instant case is to stand as the correct enunciation of a principle of American Law, one foreign seaman signing on a vessel of his own country's flag in an American port and injured in foreign waters would have substantive rights and a measure of recovery quite different and, generally speaking, a quantum of recovery much in excess of other seamen serving on the same vessel under the same articles who had signed on the vessel at other than an American port. It should be

apparent that two foreign seamen signing articles drawn in accordance with the law of their nationality serving on the same vessel of their nation's flag should be equally compensated for the same injury and their recompense measured in accordance with the social standards of the country of their citizenship. It should also be apparent that the verdict of a New York City jury assessing the damages of an injured Japanese seaman might well exceed the award of a Japanese court by 10 to 1. Obviously, one Japanese seaman who had fortuitously signed on a vessel of his country's flag in an American port should not be given this great advantage over a fellow Japanese seaman, performing the same services and suffering the same injury, who had signed articles in Osaka. Stated conversely, if the purpose of the Jones Act is to place all seamen who have ever stepped on American soil in the same category as American seamen, would not equity require that this country open its courts to seamen of any nationality, no matter what the flag of their ship, the place of their injury or the purely fortuitous circumstance of the port of their signing on. The future effectiveness of articles signed by a foreign seaman on a foreign ship, even *when the injury occurs outside the United States*, may well be in question, because of such fortuitous circumstance, if this case is not finally determined.

From the standpoint of the shipowner, similar inequities would exist since he is taxed by his government to the extent necessary to support his country's social programs. He is obliged by his government in many instances, in one form or another, to contribute to compensation funds and the maintenance of other institutions established for the welfare of the country's seamen. To superimpose an additional liability not contemplated by the laws of his country, nor his contract with seamen serving on his vessels, would in effect constitute an attempt to legislate for people not having a voice in the legislative body.

Shipowners of every nation should not be apprehensive of incurring a double liability when they sign on seamen at

any port in the world. If the decision of the Court of Appeals should be affirmed, the long established pattern of recruitment now existing among maritime nations would be disrupted with very unfortunate consequences in the practical conduct of international commerce. For example, foreign shipowners would probably be compelled to sign on seamen entirely outside of the ports of the United States. It is hardly necessary to point out to the Court that in the event of an epidemic on board ship, this would place the shipowner in an almost impossible dilemma. Moreover, if some other emergency, such as the delivery of strategic materials to various parts of the world should depend upon the recruitment of seamen in an American port, the shipowner would also be seriously embarrassed.

This Court will not be oblivious to the fact that from the standpoint of the national economy of each maritime country, the potential of shipowners' liability and requirements for United States dollars for the satisfaction of judgments obtained in the United States could constitute a serious drain at a time when most of the maritime countries of the world are in the process of readjusting their economy and carefully supervising the expenditures of limited dollar funds.

Involved in this case are questions, the answers to which will have far reaching consequences to individuals, commercial interests, and the comity and cooperation among all maritme nations, including the United Kingdom and the United States. Such comity and cooperation are important at all times and are supremely vital in these times.

POINT II

The doctrine of the Court of Appeals' decision permits a double recovery by seamen in certain instances and results in inequities.

In the instant case the seaman has already enjoyed most of the benefits allowed under the laws of his own and the ship's country. Apparently, upon learning that broader benefits are obtainable under the American standard, he is here seeking a second recovery from his former employer. It does not seem to have been the statutory intent of the Jones Act to grant to foreign seamen a double remedy under the circumstances of this case. But that is a question which should be determined by this Court.

Moreover, the interesting question is raised whether to permit a foreign seaman to enjoy the benefits of his own country's laws and then to shop elsewhere for preferred and additional treatment is not only unjust to the foreign shipowner but is also inequitable to American seamen. If the principle of the Court of Appeals is adopted, it would seem that American seamen might well be limited to recovery of benefits established under American law while foreign seamen are permitted the benefits of their own law in addition to the benefits under American law.

We respectfully call to the attention of this Court that although the Court of Appeals in the *Kyriakos* case did not mention an important equitable consideration supporting the exercise of jurisdiction under its peculiar facts and circumstances, the District Court (*Kyriakos* v. *Polemis*, 53 F. Sup. 715, 716) did so, in saying:

> "Under the special circumstances existing, because of the war conditions and the probability that in no other place can this libellant obtain relief, if he is entitled to any, the motion (to dismiss the libel) is denied."

POINT III

This case raises the question whether there should be a marked departure from the historical doctrine that matters involving the internal economy of a vessel are to be determined in accordance with the law of the vessel's flag.

Each individual maritime country, based upon its own economic system, state of social advancement, standard of living and the will of its citizens, has the right to enact legislation setting forth the rights and obligations of its shipowners and its seamen. Attempts by any other country, by legislation or judicial action, to write laws governing the obligations and liabilities of a foreign shipowner to its seamen is a departure from the law of the flag so serious as to warrant this Court's consideration. Although social legislation, and in particular legislation concerning benefits due to seamen injured in the service of their vessel, differs in individual countries, this fact does not give another country the right to impose its standards upon foreign shipowners in their relations with citizens of the country of the vessel's flag. To hold otherwise would almost destroy the historical and prevailing doctrine that questions concerning the internal economy and discipline of a vessel are to be determined by the law of the vessel's flag.

Incidents occurring aboard a vessel which do not affect the internal welfare or breach the peace of the port, at which the vessel is temporarily located, have historically been settled in accordance with the law of the vessel's flag. Hypothetically, it is inquired: If the mere fact that a foreign seaman has signed on a foreign vessel in an American port gives the American courts the right to apply American law, what is to prevent Cuba from maintaining, judicially or conceivably by legislation, that its law applies since Havana is the place where the injury complained of occurred.

The Court's attention is respectfully called to the dissenting opinion of Circuit Judge Learned Hand in *Kyriakos* v. *Goudandris*, 151 F. 2d 132, 139 wherein that noted jurist, after pointing out the internal economy and discipline doctrine, states:

> "We should demand the clearest warrant before we substitute the Jones Act—primarily at any rate a local statute—for the pertinent law of [the country of the vessel's flag]".

He also stated, p. 139:

> "We cannot fix the liabilities of foreign owners to foreign seamen for injuries occurring at sea, or in other ports than our own; at least, nobody suggests that the Jones Act does so."

We respectfully submit for the Court's consideration the words of Judge Learned Hand in his dissenting opinion in *Kyriakos* v. *Goulandris* (1945), 151 F. 2d 132, 139, 140:

> "Further, unless we are to overrule The Paula, 2 Cir., 91 F. 2d 1001, liability in these circumstances will hereafter depend upon whether the foreign seaman signs on in a United States port or abroad; certainly that should not be critical. Of course it would be critical, if the ordinary doctrine of conflict of laws obtained, but we have the most categorical declaration in The Belgenland, supra,* that in all that relates to a maritime contract the law of the flag prevails. If the decision now to be made is to stand, we should frankly overrule The Paula, so capricious will be the result if we do not. And if we do overrule it, I should think, as I have already suggested, that it might perceptibly nettle those maritime powers whose ships frequent our shores, and which may, with warrant, believe that we should not attempt to take from them the power to adjust, contrary to their desires, legal relations with which we have no concern."

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* The Belgenland, 114 U. S. 355, 5 S. Ct. 860, 29 L. Ed. 152.

CONCLUSION

It is respectfully submitted that this Court should grant petitioner's application for certiorari.

Dated, New York, N. Y.
September 29, 1952.

Respectfully submitted,

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